

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

**Legislative Incarceration Fiscal Note
REVISED**

BILL NUMBER: Senate Bill 628 (First Edition)

SHORT TITLE: Various Changes to the Revenue Laws.

SPONSOR(S): Senators Tillman, Brock, and Tucker

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
State Impact					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: When the bill becomes law

TECHNICAL CONSIDERATIONS:

None

Revision Note: *This note has been revised to clarify the charge and conviction data related to the proposed changes in Section 3.1(a) of the bill and to include dollar amounts in the Fiscal Impact Summary below.*

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, since there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: \$419 to \$4,622 per defendant
- Indigent Defense Services: \$186 to \$507 per indigent defendant
- Department of Public Safety (DPS) - Prisons: \$5,027 to \$3,996 per conviction resulting in an active sentence
- DPS - Community Corrections: \$1,332 to \$3,996 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 3.1(a) of the bill increases the criminal penalty for attempting to evade or defeat a tax from a Class H felony to a Class F felony if the offense involves less than \$100,000 and a Class C felony if the offense involves more than \$100,000. This section also increases the penalty for willful failure to file a return from a Class 1 misdemeanor to a Class H felony for second or subsequent offenses.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 3.1(a) of the bill increases the penalty for violation of G.S. 105.236(a)(7) from a Class H felony to a Class F felony for violations involving less than \$100,000 and a Class C felony for violations involving more than \$100,000. AOC provides estimates of the average cost to the court for a charge by offense class. In FY 2015-16, four people were charged with a Class H felony for violation of G.S. 105.23(a)(7). The monetary value of these cases is not known. For every person who would have been charged with a Class H felony who is instead charged with a Class F felony, the average cost to the court will be \$512 (\$1,137 for a Class F felony minus \$625 for a Class H felony). For every person who would have been charged with a Class H felony who is instead charged with a Class C felony, the average cost to the court would be \$4,622 (\$5,287 for a Class C felony minus \$625 for a Class H felony.)

Section 3.1(a) of the bill also increases the penalty for violation of G.S. 105-236(a)(9) from a Class 1 misdemeanor to a Class H felony for second of subsequent offenses. In FY 2015-16, 15 defendants were charged with 126 violations of G.S. 105-236, but it is not known how many, if any, of those were for

violations of this specific subsection. AOC does not have an offense code for violations of G.S. 105-236(a)(9), which is some indication that the violation is infrequently charged. For every person who would have been charged with a Class 1 misdemeanor who is instead charged with a Class H felony, the average cost to the court will be \$419 (\$625 for a Class H felony minus \$206 for a Class 1 misdemeanor).

The Office of Indigent Defense Services (IDS) has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The weighted average cost of a Class H felony is \$392 per case for a private appointed counsel (PAC) attorney. In FY 2011-12, the most recent year data is available, 78% of Class H felony defendants used IDS services. For the same time period, 74% of Class F felony defendants used IDS services at a cost of \$569. For every indigent defendant who would have been charged with a Class H felony who is instead charged with a Class F felony, the cost to IDS will be \$177. 82% of Class C felony defendants used IDS services at a cost of \$899. For every indigent defendant who would have been charged with a Class H felony who is instead charged with a Class C felony, the cost to IDS will be \$507.

In FY 2011-12, 39% of Class 1 misdemeanor defendants used IDS services at a cost of \$206. For the same time period, 78% of Class H felony defendants used IDS services for a cost of \$392. For every indigent defendant who would have been charged with a Class 1 misdemeanor who is instead charged with a Class H felony, the cost to IDS will be \$186.

These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

Department of Public Safety – Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2016.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	June 30 2022
1. Inmates ²	36,906	37,116	36,814	36,821	37,010
2. Prison Beds (Expanded Capacity)	37,617	37,617	37,617	37,617	37,617
3. Beds Over/(Under) Inmate Population	711	501	803	796	607
4. Additional Inmates Due to this Bill³					
5. Additional Beds Required					

In FY 2015-16, there were three convictions for violations of G.S. 105-236(a)(7). Due to the small number of convictions, a more detailed impact projection using the prison projection model would not be reliable. Impact on the prison population will occur if Class H convictions become Class F convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 50% for Class F) and longer average estimated time served (11 months for Class H compared to 17 months for Class F). The following table shows the estimated annual impact if, for example, there were four convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class H to Class F. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Reclassification of Class H Felony to Class F Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	10	18	19	19	19

Impact on the prison population will also occur if Class H convictions become Class C convictions under the proposed statute because of the higher rate of active sentences and longer average estimated time served. Under Structured Sentencing, all Class C offenders are required to receive an active sentence compared to 35% for Class H; the average estimated time served was 11 months for Class H compared to 79 months for Class C. The following table shows the estimated annual impact if, for example, there were four convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class H to Class C. In addition, there will be some impact on post-release supervision caseloads since Class C felonies require an additional three months of supervision.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2017.

³ Criminal penalty bills effective December 1, 2017 should not affect prison population and bed needs until FY 2018-19 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Reclassification of Class H Felony to Class C Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	3	6	10	14	18
20	13	31	51	72	92

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 50% of Class F felony offenders received active sentences averaging 17 months. For every one Class F felony offender receiving an active sentence, the cost to the prison section will be \$7,769 (\$457 monthly cost times 17 months). In FY 2015-16, all Class C felony offenders received active sentences averaging 79 months. For every one Class C felony offender receiving an active sentence, the cost to the prison section will be \$36,103 (\$457 monthly cost times 79 months).

Section 3.1(a) of the bill also reclassifies a Class 1 misdemeanor to a Class H felony for second and subsequent violations of G.S. 105-236(a)(9). In FY 2015-16, there were 11 Class 1 misdemeanor convictions under G.S. 105-236. While it is not known the specific offenses used to calculate the prior conviction points, four of the 11 offenders with a conviction under G.S. 105-236 had at least one prior conviction. In FY 2016, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were four convictions (threshold) or 11 convictions (see above data) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Reclassification of Class 1 Misdemeanor to Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
11	4	6	6	6	6

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$15.02 per day, or \$457 per month, which includes the cost of food, clothing, and health care. In FY 2015-16, 35% of Class H felony offenders received active sentences averaging 11 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$5,027 (\$457 monthly cost times 11 months).

Department of Public Safety – Community Corrections

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or

vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections (CCS); CCS also oversees community service. Supervision by a probation officer costs \$148 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations. The table below shows the monthly cost for each year of the five year projection, adjusted for inflation.

Section 3.1(a) of the bill increases a Class H felony to a Class F felony for violations involving \$100,000 or less and to a Class C felony for violations involving amounts greater than \$100,000. In FY 2015-16, 35% of Class H felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 27 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months).

In FY 2015-16, 50% of Class F felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 32 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$4,736 (\$148 per month times 32 months).

In FY 2015-16, all Class C felony offenders received active sentences. All active sentences for Class B1 through D felonies result in 12 months of post-release supervision (PRS). Therefore one conviction resulting from this bill will require at least 12 months of supervision. The cost of 12 months of supervision is \$1,776 per offender (\$148 per month times 12 months).⁴

Section 3.1(a) also increases the penalty for violation of G.S. 105-236(a)(9) by increasing the penalty for second or subsequent violations from a Class 1 misdemeanor to a Class H felony. In FY 2015-16, 31% of Class 1 misdemeanor offenders received active sentences; 69% received probation. Active misdemeanor sentences are served in local jails and do not require any post-release supervision. The average length of

⁴ Due to the effective date of December 1, 2017 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2017-18. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2018-19.

probation imposed for this offense class was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,200 per offender (\$148 per month times 15 months).⁴

In FY 2015-16, 35% of Class H felony offenders received active sentences. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 27 months. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,332 per offender (\$148 per month times nine months).⁴ For every offender sentenced to probation, the average cost would be \$3,996 (\$148 per month times 27 months).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS:

The Administrative Office of the Courts has reported the following technical considerations:

1. Effective date: the effective date (“when it becomes law”) for Section 3.1(a) is too soon for NCAOC to be able to implement the necessary changes for the substantive criminal offense. Most substantive criminal changes become effective December 1, for offenses committed on or after that date, in order for NCAOC to educate court officials on the changes, as well as to make any necessary adjustments to processes, forms, and computer applications.
2. Section 3.1(a), G.S. 105-236(a)(9b): the proposed G.S. 105-236(a)(9b) is ambiguous. It is unclear exactly what is intended by this provision. It appears to be an attempt to enact a variant of the offense of identity theft under G.S. 14-113.20, but specific to tax filings or other representations made to the Department of Revenue. If that is its purpose, the provision is likely too vague to support any successful prosecutions. For example:
 - a. It sets out no element that would distinguish it from the existing offense of identity theft under G.S. 14-113.20, like a fraudulent filing or other representation to the Department of Revenue. That is suggested in the second sentence, but again, not in language specific enough to set it apart from the more generic offense.
 - b. The first sentence is redundant, because that is already stated in the first sentence of G.S. 14-113.20(a). Stating that a violation of a completely different offense statute constitutes a crime does not establish a new crime in the place where it is restated.
 - c. The addition of more items of “identifying information” may have no effect, because (i) for the reason identified in the first bullet, the proposed subdivision (9b) does not appear to establish an independent criminal offense, and (ii) because the additional items would be limited to “this subdivision,” they would not constitute “identifying information” for a prosecution under G.S. 14-113.20.
 - d. Items (9b)(c) and (d) may be redundant (in whole or in part) to existing items under G.S. 14-113.20(b):
 - i. (9b)(c) (Taxpayer Identification Number) is partially redundant to G.S. 14-113.20(b)(1), which already covers fraudulent use of the TIN of an “employer.”
 - ii. (9b)(d) (Federal Identification Number) may be entirely redundant to the same item, G.S. 14-113.20(b)(1), if it was intended to mean a “Federal Employer Identification Number.” If it means some other number, it is likely too vague to support a successful prosecution.

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